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This is a direct transcript of an interview with Peter Bartlett who is a prominent media lawyer and partner at Minter Ellison.

“One of the big problems for people being interviewed is they feel they are having a nice chat with the journalist and they perhaps feel free to say things they will later regret when they see it in print or hear it on radio or TV. Sometimes you may even say something that will get you into legal trouble, although bear in mind the media organisation should edit anything like that out (if it is pre-recorded).”

What is defamation?

- *“Defamation is basically injury to reputation. It’s basically that if you see something said about you that you don’t like then that would be defamation, if you feel that it damages your reputation.*
- *The material has to be published for defamation purposes, which means passing it on to a third party.*
- *Can be in print, on radio, TV or online, on social media, over the phone or in a private conversation.*

Who can be defamed?

- *“Usually it’s individuals.*
- *Australia now has uniform defamation laws which state that corporations with more than 9 employees cannot sue.*
- *HOWEVER the executives of those companies can still sue.*
- *Small groups of people can sue but not major corporations.*
- *Public bodies like local governments, state and federal governments and government departments cannot sue for defamation BUT the individuals can.*
- *You can defame the prime minister but you can say a lot more about political figures than normal people.*

What are the defences to defamation?

- *“The major one is TRUTH. You need to prove the truth of every defamatory imputation or meaning that comes out of that publication and that’s by far the major one.*
- *If you publish government documents that are on the public record.*
- *Fair comment, e.g. you are allowed to criticize the theatre, books, movies, restaurants, within certain limits. It can go broader but the person needs to set out facts and then they can have an opinion on those facts if the issue is in the public interest.*

- *Absolute privilege is when a person has the right to make defamatory statements even if they are untrue. This can be done by parliamentarians on the floor of parliament. It also relates to a witness in a court case.*
- *Qualified privilege which is a fair and accurate report by journalists of what happens in court.*
- *There’s also common law qualified privilege. This relates to a corporate situation where for example a complaint has been made to the human resources department relating to harassment in the workplace.*

What about social media?



- *“Using social media is not like using the telephone. Using the telephone there’s usually no record of it but generally there is a record of what you are tweeting and what you put on Facebook and so to some degree it’s similar to publishing it in the print media or on radio or television and you can be sued for it.*
- *People are being sued for what they say about others on social media and it’s getting more common.*
- *Find out what your company policy is on social media before you go publishing anything that could get you in trouble.*

What if you’re a witness, defendant or plaintiff in a court case?

- *“If you’re a witness in a court case and you’re in the box you can’t be sued on anything that you say. Obviously you need to be totally and utterly truthful. If you are not truthful the barristers are likely to find fault in what you say.*



What can you say outside court?

- *“There are some who will say there is the court of law and there’s the court of public opinion and they’re both equally important but if you start saying things outside court you, number one have no protection against defamation and secondly if you in any way prejudice a fair trial then you can be in contempt of court. That can carry a jail term and hefty fine AND the trial can be aborted.*

What if a crew barges onto my property with cameras rolling?

- *“When you see people put up their hands over the camera lens or yell or slam the door, it’s actually not a good look. So the best thing to do is to ask those people nicely to leave. If they are on your property they are trespassing so you can legitimately ask them to leave.*
- *If they do not go you can say you will call the police.*

What if a crew or photographer is standing off your property but filming your property. Can you do anything about that?



- *“This is difficult because they are not trespassing. In Australia we have no general right for suing for breach of privacy. But if they are filming through your window into the house that could be in breach of the surveillance devices act.*

What if someone films or records you without you knowing?

- *“If they are recording your voice over the telephone there are various offences under the relevant legislation and also if they are filming you are looking at the surveillance devices act. There are potential and serious offences there.*
- *If you find out they have recorded you, you can try to get an injunction against them to stop them using it and you can sue them for damages if it’s breach of confidentiality or defamatory.*

Some final points.

- *“The major mistake made by people being interviewed is they tend to just say things as if they were saying them in the pub or to a very close family friend and don’t actually think through the consequences that those words could actually appear in print, or on radio or on television.*
- *You need to have a relationship with the reporter and a relationship of trust so that when say “this is off the record can we just talk about this totally off the record” that you can be frank and tell the reporter what your sensitivities are and what you really think but you don’t want this or that published.*
- *And then choose your words that are on the record very very carefully.*

The material in this interview is information only and should not be treated as legal advice.

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